

IN THE MATTER OF	:	BEFORE THE
SUMMIT ASSOCIATES, LLC	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-001V

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DECISION AND ORDER

On April 9, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Summit Associates, LLC, for variances to reduce the 30-foot side setback from a residential district to 10 feet for 48 parking spaces, to 12.8 feet for 45 proposed parking spaces, and to 10 feet for a proposed retaining wall on the south and southeast corner of property located in a B-2 (Business: General) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, Reese and Carney, LLP, represented the property owner. The Petitioner, Mr. Gene Singleton of Summit Associates, and Mr. Peter Stone, an engineer with the civil engineering firm of Patton Harris Rust & Associates, testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property (the “Property”), currently known as 9155 Washington Street, is located in the 6th Election District at approximately 290 feet west of the Washington Street intersection with Fair Street. The Property is identified on Tax Map 47, Grid 11, as Parcel 93 and is owned by Savage Mill Remainder, LLC.

2. The Property is a rectangular-shaped lot with a small panhandle and consists of about 10.061 acres. The 5-acre area proposed for development is about 350 wide and 590 deep. It is largely wooded and vacant. The eastern section of the property is a parking area reserved for Savage Mill.

3. While the Property's northwest corner is generally level, the land slopes down 38 feet from the western to southeastern corner and 24 feet downward to the south side.

4. Vicinal Properties: Wooded areas of Savage Park, a community public park, adjoin the Property on the north, west, and south sides. North of this wooded area is an open area with athletic and other active recreational facilities. The Little Patuxent River and a trail lie to the west and south. Vicinal properties to the Property's east include several R-20 (Residential: Single) zoned lots fronting Washington Street improved with single-family detached dwellings and parking for the Savage Mill complex, which includes a building farther southeast of the Property.

5. The General Plan's 2000-2020 Policies Map designates the Property as Residential Areas and Redevelopment Corridors.

6. The petitioner, Summit Associates, LLC, is requesting variances to reduce the 30-foot side setback from a residential district to 10 feet for 48 parking spaces on the Property's north side, to 12.8 feet for 45 proposed parking spaces on the Property's south side, and to 10 feet for a proposed retaining wall on the Property's south and southeast corner.

7. The supplement to the petition states that five acres is small for the typical lot of a standard hotel and that the proposed hotels will be smaller than the industry average.

8. As Mr. Singleton testified, the proposed development would include two hotels and a restaurant. The proposed extended stay hotel, to be located on the north side of the Property, would be built as Phase I and the traditional hotel as Phase II. The restaurant will serve both hotels.

9. Mr. Stone testified that the existing woods on the western portion of the Property and the sloping topography on the south and southeast sections constrict the size of the developable portion of the site, making it narrower. The two proposed retaining walls are intended to address the sloping topography and to tie out the existing grades.

10. Mr. Stone also testified to the Petitioner's ongoing discussions with the Departments of Recreation and Parks (DRP) and Planning and Zoning (DPZ) on several design issues intended to minimize adverse effects on Savage Park., including landscaping, access, parking, stormwater management, and hotel architecture.

11. Applicant's Exhibits 1, 2, and 3 show the narrowness of the Property in comparison with neighboring B-2 zoned properties. Exhibits 1 and 2, which comprise the Carmax site on Route 1, are two B-2 lots, 6.62 and 2.59 acres in size and together are wider than the Property. Exhibit 3, the Weis Market site just north of the Carmax site, is 12.24 acres and wider than the subject Property.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a

practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is narrower than neighboring B-2 properties. In addition, it slopes toward the south and southeast and the western edge next to Savage Park is largely wooded. The lot and resulting building envelope are thus narrower than other B-2 lots in the vicinity (Exhibits 1, 2, and 3). The narrowness of lot and buildable area make it is necessary to encroach into the side setbacks, even though the proposed hotels are smaller than typical. Consequently, I find the size, narrowness, and topography of the Property are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The hotels and restaurant will be used for permitted purposes and are consistent with the General Plan's 2000-2020 Policies Map. The granting of the variance will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size, shape, and topography of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed parking spaces, which must comply with county regulations, and retaining walls are the minimum size feasible and will be located in the only areas practical due to the Property's size, shallowness, and topography. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **23rd day of April 2007**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Summit Associates, LLC, for variances to reduce the 30-foot side setback from a residential district to 10 feet for 48 parking spaces, to 12.8 feet for 45 proposed parking spaces, and to 10 feet for a proposed retaining wall on the Property's south and southeast corner is hereby **GRANTED**;

Provided, however, that the variances will apply only to the uses and structures as described in the petition and site development plan submitted, and not to any other activities, uses, structures, or additions on the Property, subject to the following conditions¹:

- (1). The variances shall apply only to the parking spaces and retaining walls being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
- (2). The landscape edge along the Washington Street right-of-way shall be a type E (Parking Buffer), or as otherwise agreed upon by DPZ, DRP, and the Petitioner.
- (3). The remainder of the perimeter shall be a Type D (Screen) landscape edge, or as otherwise agreed upon by DPZ, DRP, and the Petitioner.
- (4). The stormwater management facility shall be an underground facility and the existing wooded area along the west side of the Property shall be retained to

¹ These conditions reflect, in part, DPZ's amendments to the conditions proposed in the technical staff report, per a memorandum to me from DPZ dated April 9, 2007.

the greatest extent possible, or as otherwise agreed upon by DPZ, DRP, and the Petitioner.

- (5). The variance will lapse or become void if substantial construction in accordance with the required permits conforming to plans for which the variance is granted is not completed within *four* years from the date of this Decision and Order.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.